

December 20, 2002

Confirmation Letter – Unit-Firm Renewable Product

When fully executed, this letter confirms the agreement by NDC Consulting Engineers, Inc. (“Seller”), to provide to the California Department of Water Resources with respect to the Electric Power Fund separate and apart from its powers and responsibilities with respect to the State Water Resources Development System (“DWR”), the “Buyer,” the right to dispatch the unit identified below for all electrical products as specified herein. Pacific Gas and Electric Company (“PG&E”) has also entered into an EEI Master Power Purchase and Sale Agreement and confirmation (the “PG&E Agreement”) with respect to the right to dispatch such unit for all such electrical products.

1. Seller: NDC Consulting Engineers, Inc.
2. Buyer: DWR. On the next following Business Day after the date on which PG&E receives a credit rating of at least BBB- or better by S&P and Baa3 or better by Moody's, the DWR Agreement shall terminate and be superseded automatically by the PG&E Agreement, PG&E shall automatically supersede DWR as the Buyer under the PG&E Agreement and DWR shall be relieved of all future liability with respect to the transactions set forth in this Agreement and in the PG&E Agreement.
3. Unit:
 - a. Seller shall supply all electrical products under this Confirmation from the following resource(s): Big Valley Cogeneration [CaISO Resource I.D.: BIGVAL_6_UNIT] (“Unit(s)”). To the extent the Products will be delivered from more than one Unit, all output from such Units must be delivered through a single meter and that meter must be dedicated exclusively to those units described herein. This/these Unit(s) employ(s) the following renewable technology/ies: Closed Loop and Biomass. To be eligible, a Unit(s) must qualify as an “Eligible renewable energy resource” as defined in the new Section 399.12, added to the California Public Utilities Code by SB 1078. All environmental attributes associated with generation from the Unit(s) must be provided for an offer to be accepted and shall be conveyed to Buyer as included in the delivery of the Product.
 - b. Environmental Attributes shall have the meaning set forth in Attachment A “Environmental Attributes,” attached hereto and incorporated herein by this reference. Seller represents that Seller holds the rights to all Environmental Attributes associated with the Unit(s), and Seller agrees to convey and hereby conveys all such Environmental Attributes to Buyer as included in the delivery of the Product from the Unit(s).
4. Product: Full Unit Output. Seller’s hourly load profile is 6.0 MW for all hours during the term of this agreement, except as excused for Planned Outage Allowance or per the

Unplanned Outage Allowance. Seller to provide all energy from unit to the extent necessary to meet the hourly profile.

5. Quantity:

a. Maximum Capacity: 6.0 MW [must be no less than 3 MW]. Buyer shall have the exclusive right to use all or any portion of the amount of the Maximum Capacity, including green attribute or rights, for all services listed in part b, below, and for daily/hourly changes. The Maximum Capacity shall be no less than maximum unit output, less station use.

b. Seller can specify below additional dispatchability and/or ancillary services it wishes to offer in addition to the hourly profile indicated above. [Seller must list these services here, along with the amounts for each service]:

N/A

c. The parties shall follow an "Operating Procedures Agreement," which must be executed by Seller before the commencement of service hereunder and a copy of which shall be provided to Seller by Buyer within 10 days after its selection as a winning bidder.

d. Testing: (A) The audit rights under Section 10.9 of the Master Agreement shall include such inspections and testing of meters as is reasonably necessary to confirm their accuracy consistent with current ISO practices and procedures or any successor tariff requirements. The Party requesting any such inspections and testing shall bear the cost of the foregoing in the event the meters are accurate within applicable ISO or successor metering requirements. The other Party shall bear these costs if the meters are not accurate within applicable ISO or successor metering requirements. (B) In addition, such audit rights shall include inspections and testing as is reasonably necessary to confirm the accuracy of any notice delivered by Seller to Buyer respecting the availability or operation of the Unit(s) within the parameters set forth in Section 4. If Buyer requests that a Unit be tested, Seller shall have the right to a prompt retest of such Unit. Seller shall also have the right to request a test of a Unit at any time, and Buyer shall have the right to a prompt retest of such Unit. The Party requesting that a Unit be tested shall bear the costs of such test. (C) Seller hereby consents to Buyer obtaining from the ISO the ISO meter data applicable to the Unit(s).

e. Planned Outage Allowance: 40 days per calendar year, which Seller shall schedule in writing with Buyer as set forth in the Operating Procedures Agreement for the next following calendar year on or before December 1 [specified months shall exclude January, June through October, and December]. For the purposes of this Agreement, "Planned Outage" means removing the equipment from service availability for inspection and/or general overhaul of one or more major equipment groups. To qualify as a Planned Outage, the maintenance must actually be conducted during the Planned Outage, and must be of the type that is both necessary to reliably maintain the Unit(s) and cannot be

prudently conducted during Unit operations.

- f. **Unplanned Outage Allowance:** 100 hours per year; provided that, no more than 4% of the Unplanned Outage Allowance may be used in any month during the period from June through October. The Unplanned Outage Allowance may be used for either Forced Outages or Maintenance Outages. Seller shall notify buyer of any forced outage within 10 minutes, and shall provide an estimate of its expected duration of the outage within 1 hour thereafter. Within these limits, a Forced Outage shall excuse Seller's obligation to deliver electrical products. For any unexcused outage that lasts longer than 1 hour, Buyer shall pay no capacity payment for the period of the outage, and a Unit(s) shall be deemed to be scheduled by Buyer each hour for purposes of adjusting payments due under the Confirmation. For purposes of this agreement, the term "Forced Outage" shall mean an unplanned reduction or suspension of the electrical output from the Unit(s) in response to a mechanical, electrical, or hydraulic control system trip or operator-initiated trip in response to an alarm or equipment malfunction; provided that, a Forced Outage shall not be excused if it resulted from the negligence of Seller or the operator of the Unit(s). Outages that both (i) meet this definition of Forced Outage and (ii) do not exceed the allowable limits set forth herein shall be excused. Forced Outage shall not include any outage that results from a loss of electric or gas transmission service. For the purposes of this Agreement, the term "Maintenance Outage" means the removal of equipment from service availability to perform work on specific components that can be deferred beyond the end of the next weekend, but requires the equipment be removed from service before the next Planned Outage. Seller shall provide advance written notice of any Maintenance Outage to Buyer as set forth in the Operating Procedures Agreement for the outage to qualify as a Maintenance Outage. Within these limits, a Maintenance Outage shall excuse Seller's obligation to deliver electrical products. Under no circumstances may Seller substitute market power for the output of the Unit(s) during an Unplanned Outage.
- g. **Prolonged Outage:** In the event of a "Prolonged Outage," Buyer shall have no obligation to make capacity payments hereunder for the period of the outage, that is, until the Unit(s) is again able to provide the hourly profile on a reliable basis. For purposes of this agreement, a "Prolonged Outage" is any period of more than 30 consecutive days during which the Unit(s) is or will be unable, for whatever reason, to provide at least 60% of the hourly profile as scheduled by Buyer. Seller must notify Buyer of the outage as soon as possible under the circumstances, in writing, and, for the duration of the outage, Buyer need not schedule from the Unit(s). Seller must notify Buyer when the Unit(s) is again capable of providing the hourly profile and, upon buyer's receipt of such notice, Buyer shall resume capacity payments and scheduling. Any outage that prevents the Unit(s) from delivering at least 60% of the hourly profile for a period of six (6) consecutive months shall, at Buyer's election, constitute an Event of Default; provided that, an outage resulting from an event of Force Majeure that prevents the Unit(s) from delivering at least 60% of the hourly profile for a period of

twelve (12) consecutive months shall constitute an Event of Default. Under no circumstances may Seller substitute market power for the output of the Unit(s) during a Prolonged Outage.

- h. Duty of Care: Seller agrees (1) to use the best industry practices in the maintenance and operation of the Unit(s), so that there is not a material change in the operating characteristics of the Unit(s) over the term of this agreement and (2) to use all commercially reasonable efforts to obtain and maintain all regulatory approvals needed to operate and maintain the Unit(s)s, so that there is no delay in the commencement of service hereunder and no break in service attributable to regulatory action.
- 6. Delivery Point: (a) Unit's bus bar, if unit(s) is located in California Independent System Operator ("CAISO") zone North of Path 15 as currently defined ("NP15"), or (b) an agreed-upon bus bar in NP15 if unit(s) located outside the CAISO NP15 zone and Seller has firm transmission rights to the specified bus bar for the full term of this agreement, or (c) any other point subject to Buyer's agreement.
- 7. Term: from the date of the execution of this Confirmation to the earlier of (a) Business Day following the day that the long-term unsecured senior debt of PG &E is rated BBB- or better by S&P and Baa3 or better by Moody's, and (b) the first anniversary of the execution of this Confirmation.
- 8. Capacity Price: Buyer shall pay Seller a capacity payment of \$N/A/kw-year, allocated in accordance with the monthly Capacity Payment Schedule attached hereto.
- 9. Energy Price: Energy shall be measured in MWh at the California Independent System Operator ("ISO") (or its successor) revenue meter for the Unit(s) to determine the amount of Energy delivered at the Delivery Point, which amount shall then be multiplied by the applicable generation meter multiplier (or any successor method to account for losses established by the ISO) for each Unit, to determine the amount of Energy delivered at the Delivery Point. Buyer shall pay for only the net amount delivered after station use needs are subtracted. Buyer will pay Seller for each MWh delivered by Seller from the Unit and received by Buyer at a rate equal \$50/MWh.
- 10. Buyer will pay N/A \$/start-up for each start required by Buyer's dispatch instructions.
- 11. Electric Dispatch: Buyer shall be the Scheduling Coordinator for the Unit(s). DWR shall have the right to designate PG&E as its scheduling agent until the transition to the Seller/PG&E Master Agreement is effective. If Buyer is experiencing an overgeneration condition (as defined by the ISO), Buyer may, without penalty hereunder and subject to the operating parameters of the unit, reduce the scheduled output from the Unit(s) and shall not be required to pay for the amount of energy not actually delivered as a result of this reduction. Buyer will notify Seller, conforming to NERC scheduling protocols, for any day-ahead electric dispatch if such product is offered. Buyer will also notify Seller, conforming to California ISO scheduling protocols, for any hour-ahead or real-time electric dispatch and changes if such product is offered. Seller shall notify Buyer of any instruction received from the ISO with respect to RMR contracts and 'must

offer' requirements. Any applicable RMR contract shall have precedence over scheduling under this agreement.

12. Schedule of Deliveries: Seller shall provide delivery schedules to Buyer consistent with the hourly profile no later than thirty-eight (38) hours prior to the beginning of each delivery day. Buyer may reduce the 38 hour period whenever it is practicable to do so. Each delivery schedule shall clearly identify, for each hour, Seller's best estimate of all amounts of energy to be delivered and sold to Buyer pursuant to this agreement.
13. Transmission: The risk of transmission outages is allocated to each of the parties as follows: Seller is responsible for electric transmission to the Delivery Point and bears all risks and costs associated therewith; Buyer is responsible for electric transmission from the Delivery Point and bears all risks and costs associated therewith; the party providing fuel is responsible for gas transmission to the Unit(s) and bears all risks and costs associated therewith. The failure of gas or electric transmission service shall not be an excuse from performance hereunder.
14. Remedies:
 - a. If in any month Seller fails to provide the electrical services from the Unit(s) as dispatched by Buyer and such failure to deliver is not excused hereunder, then (i) no energy payment shall be due for the energy not actually delivered from the Unit(s), and (ii) the capacity payment for that month shall be reduced pro rata according to the total megawatt hours not provided from the Unit(s) as a ratio of the total megawatt hours dispatched by Buyer for that month, taking into consideration the outage allowances provided for in sections 5.e. and 5.f, and (iii) Seller shall reimburse Buyer, by set-off if Buyer so elects, for any energy imbalance costs and penalties incurred by Buyer for any hour during which Seller fails to deliver the full amount of energy scheduled by Buyer, excluding only hours during which the Unit(s) is unavailable because of an allowable outage, an RMR dispatch by the ISO, an Emergency dispatch by the ISO, or a Force Majeure condition; provided that, (A) the burden is the Seller's to demonstrate that one of these excuses applies to any particular instance of nonperformance by the Unit(s) and (B) the energy provided to the ISO by the Unit(s) shall be deemed delivered hereunder, and (C) any revenue received by Seller from the ISO for such dispatch shall be remitted to Buyer.
 - b. If Buyer fails to pay the undisputed amount of any invoice that is complete, properly formatted, and delivered to the correct address within the prescribed period, Seller may, without penalty, (i) suspend the provision of services under this Confirmation and (ii) the capacity payments under section 7 shall continue to accrue during the suspension period, and (iii) make sales to third parties from the Unit(s) until such payment, including applicable accrued interest, is received by Seller. Upon receipt by Seller of Buyer's payment, Buyer's rights hereunder shall be fully restored.
 - c. The remedies set forth here shall be the exclusive remedies (i) for Seller's failure to deliver electrical products as dispatched by Buyer and (ii) for late payment of undisputed amounts by Buyer; provided that, the failure of either party to make

required payments hereunder for a period of more than sixty (60) calendar days after an invoice for the underlying charges has been delivered to it shall constitute an Event of Default under the Master Agreement.

- d. The Unit(s) have not been designated as a Reliability Must Run resource by the CAISO for calendar year 2003.

15. Non-performance:

- a. In the event that the Unit(s) specified in Section 3 of this Confirmation is not commercially operable and delivering to Buyer by December 31, 2003, Buyer may at its sole discretion terminate this agreement and Seller shall pay Buyer damages in the form of \$15,000.00 (fifteen thousand dollars) times the MW specified under this agreement. Seller and Buyer agree that such damages are a reasonable approximation of the damages that Buyer will incur and shall be construed as liquidated damages and not as a penalty. Such liquidated damages shall apply solely to a termination of this agreement by Buyer for the reasons stated in this Section 15.
- b. Within thirty (30) days of acceptance of this Confirmation by Buyer, Seller shall provide to Buyer, as security for the payment of liquidated damages in accordance with paragraph 15. a above, a letter of credit or surety bond issued for the benefit of Buyer, in the form attached to PG&E's Request For Offers, or other security acceptable to Buyer.

This confirmation letter is being provided pursuant to and in accordance with the Master Power Purchase and Sale Agreement dated December 20, 2002 (the "Master Agreement") between Seller and Buyer, and constitutes part of and is subject to the terms and provisions of such Master Agreement. Terms used but not defined herein shall have the meanings ascribed to them in the Master Agreement.

BUYER

DEPARTMENT OF WATER RESOURCES
separate and apart from its powers and
responsibilities with respect to the State Water
Resources Development System

By: _____

Name: _____

Title: _____

Date: December 20, 2002

SELLER

By: _____

Name: Kevin Leary

Title: President

Date: December 20, 2002

Attachment A Environmental Attributes

“Environmental Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable from the facility. Environmental Attributes include but are not limited to: (1) any avoided emissions of pollutants to the air, soil or water such (subject to the foregoing) sulfur oxides (SO_x), nitrogen oxides (NO_x), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO₂), methane (CH₄) and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere; and (3) the reporting rights such as Green Tag Reporting Rights to these avoided emissions. Green Tag Reporting Rights are the right of a Green Tag Purchaser to report the ownership of accumulated Green Tags in compliance with Federal or state law, if applicable, and to a Federal or state agency or any other party at the Green Tag Purchaser’s discretion, and include without limitation those accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Green Tags are accumulated on kWh basis and one Green Tag represents the Environmental Attributes associated with one (1) MWh of energy. Environmental Attributes do not include any energy, capacity, reliability or other power attributes from the project nor production tax credits or certain other financial incentives existing now or in the future associated with the construction or operation of the energy projects.”

Capacity Payment Schedule – N/A